

MARCH 16, 2004

UNAPPROVED MINUTES

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CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	March 16, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez (arrived 6:05 p.m.), Livengood (arrived 6:05 p.m.), and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following six items listed on the agenda and supplemental agenda:

1. **CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Turner Construction et al.
Santa Clara County Superior Court Case No. CV008400
2. **CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Pacific Gas and Electric
Santa Clara County Superior Court Case No. CV790089
3. **CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. McCarthy, et al.
Santa Clara County Superior Court Case No. CV790091
4. **CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Santa Clara Valley Water District
Santa Clara County Superior Court Case No. CV790093
5. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN #022-08-042
Negotiating Parties: City of Milpitas and County of Santa Clara
Agency Negotiator: Thomas J. Wilson
Under Negotiation: Terms and Conditions for Disposition or Lease
6. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020
Negotiating Parties: Milpitas Redevelopment Agency/City and Abel Trust
Agency Negotiator: Thomas J. Wilson
Under Negotiation: Terms and Conditions for Acquisition of Property

Mayor Esteves adjourned the meeting to Closed Session at 6:01 p.m.

The City Council meeting reconvened at 7:09 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE	Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.
MINUTES	<p>MOTION to approve the City Council minutes of March 2, 2004, including joint meeting with the Redevelopment Agency, as submitted.</p> <p>M/S: Dixon, Polanski. Ayes: 5</p>
SCHEDULE	<p>Vice Mayor Dixon added the VTA Finance Administration meeting on March 18, a VTA Workshop on March 19, a Special Meeting of the Santa Clara County Library Joint Powers Authority on March 25 to discuss the failure of Measure B and possible service cuts, and the San Jose/BART Policy Advisory Board meeting on March 31, 2004, at 3:00 p.m.</p> <p>MOTION to approve the Schedule of Meetings as amended.</p> <p>M/S: Dixon, Polanski. Ayes: 5</p>
PRESENTATIONS	<p>Mayor Esteves asked Emergency Services Coordinator George Washburn to join him at the Podium to assist in presenting Commendations to the SAFE Class 9 graduates. Mayor Esteves read the list of graduates, Lynette Antorov, Todd Bradford, Jack Callison, Antonella Como, Mary Fairchild, Oscar "Skip" Hicks, Carla Kearin, Robert Kearin, Syed Mohsin, and Josephine Nguyen, asking those present to come forward to receive their commendation.</p> <p>Mayor Esteves asked Police Sergeant Max Nobida to join him at the podium to assist in presenting Commendations to the citizens who participated in the Milpitas Police Department Senior Volunteer Program. Present to accept commendations were Jean Andona, Ted Armstrong, Butch Dennis, Margaret Fisher, Mary Jane Hill, Geneva Jackson, Lillian Kupiec, Pat Nathan, Bob Roberts, Claire Schroeder, Betty Lee Stein, Ed Wagner, Betty Won, and Ron Won; unable to be present were May Chan, Ken Doll, Rita Hofmann, Nancy Sigsby, Richard Sigsby, Patti Wang, and Jane Wong.</p> <p>Mayor Esteves read a Commendation recognizing the Milpitas Toastmasters #7242 on celebrating 15 years of excellence and presented it to the Club's President. The President of the Club thanked the Mayor and Council for the recognition, stating that it was an honor and privilege to be present.</p> <p>Mayor Esteves read a Commendation recognizing Francis R.G. Briones on his achievement of the rank of Eagle Scout and presented it to Mr. Briones. R.G. Briones thanked the Mayor, City Manager, and City staff for making it possible for his Eagle Court of Honor to be held at City Hall last Saturday. Mayor Esteves recognized R.G.'s parents, who were present in the audience, and commented that he and Vice Mayor Dixon had attended the Eagle Court this past Saturday.</p>
CITIZENS FORUM	<p>Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.</p> <p><u>Mareile Ogle</u>, Milpitas, thanked the terrific team of Althea Polanski and Cindy Maxwell for inspiring the Committee Members to make the recent 50th Anniversary Celebration a success. Ms. Ogle said she had a complaint about the future May 1 Global Village, which she felt would not be successful because as of December, only 11 nations out of a possible 186 were signed up to be exhibited with only one (France) of a possible 25 European countries was represented. Ms. Ogle further stated she thought this was because of the new rules requiring each group to be responsible for three booths and one would have to sell food. Ms. Ogle said it was too late for this year but asked that it be changed for next year. Mayor Esteves said he would pass on the information to the committee in charge.</p>

Debbie Giordano, Milpitas, said she wanted to put on the official record her personal opposition to the process and timing of the recent raise given to the City Manager noting that she had voiced her opposition in the Milpitas Post last week. Ms. Giordano further stated her concern was that the public was never asked if anyone wanted to speak on the issue and it was rushed ahead before she had a chance to get up and voice her opposition. Ms. Giordano informed the Council that she would like to speak on Items 3 and 4 on tonight's agenda.

Manuel Gabriel, Milpitas, expressed concern about the I680 corridor sound wall stating that in the past couple of months there had been changes in the plans resulting in moving the sound wall and leaving half of the neighborhood without a sound wall. Mr. Gabriel commented on a La Palma Court meeting, about which the rest of the neighborhood was not notified that this was going on, and now the State had decided to put a sound wall on the freeway at more cost than the original sound wall and leaving the people who live down Hillview with nothing. Mr. Gabriel said he had given information to the Clerk, including a picture looking out his kitchen window at the freeway, he can see the lights from his downstairs bedroom, the noise was horrendous, they were told that the State was going to do this sometime in 2008 or 2006, and asked why they would have to wait because somebody on La Palma doesn't like the height of the wall while we're suffering from the sound.

Ed Blake, Milpitas, said he wanted to underscore the remarks concerning the sound wall made by his neighbor, Mr. Gabriel; in 2001, Caltrans did an elaborate presentation at the Community Center describing the massive amount of sound walls that would take place sometime in 2003; it was now 2004 and he didn't see any walls; the residents were working together and had contacted the Sunnyhills Association, whom they understood had had a previous problem with sound walls, and asked that the Council support and assist them in this effort.

Rob Means, Milpitas, said about a year ago he attended an anti-war demonstration in San Jose, there would be another march against the war this Saturday, and invited everyone to come out.

Mr. Swanson said it was nice to hear adults learning how to speak to people. Mr. Swanson also spoke about the speed bumps on Carnegie Drive that had flattened because of heavy truck traffic and about speeding on the street.

ANNOUNCEMENTS

Councilmember Gomez requested a staff update on the sound wall issue. City Manager Thomas Wilson responded that staff had been working with the neighbors, direction was being provided by the City Engineer's office, staff was equally frustrated with the difficulties with the funding, which was the result of the State's condition, and a report would be given to the Council.

Mayor Esteves said he had also been watching the development of the sound wall, had attended one of the meetings, and would continue to monitor the development. Mayor Esteves thanked the neighborhood for being militant and, at the same time, very positive for the sake of their neighborhood and for the betterment of Milpitas.

Councilmember Gomez said his kids were watching their first Council meeting and, if they were still awake, wished them good night.

Councilmember Polanski said she appreciated getting the invitation to the meetings (about the sound walls) with the neighbors, but she hadn't had a free night to attend; a meeting was scheduled later this month that she also wouldn't be able to attend but asked that they please keep her informed. Councilmember Polanski reminded everyone that the Milpitas Unified School District/Foundation for Education Crab Feed was this Friday but she understood the event was sold out and thanked everybody who supported this endeavor. Councilmember Polanski also thanked the Chamber of Commerce for its recent Crab Feed, which she enjoyed. Councilmember Polanski reported that the Community Advisory Commission held one of its longest meetings to consider the CDBG funding recommendations and commended the volunteers for their hard work on behalf of the City this month. Councilmember Polanski

congratulated the Knights of Columbus for honoring three people this Saturday at the 30th Annual Awards Dinner and Dance and congratulated Firefighter of the Year Steven King, Police Officer of the Year Henry DeKruyff, and Citizen of the Year Marilyn Hay.

Vice Mayor Dixon added that Marilyn Hay is the Chair of the Library Advisory Commission and last night the Commission approved their mission statement and work plan, which would be coming to the Council on April 6. In regard to the sound wall issue, Vice Mayor Dixon commented that everytime this group had a meeting, she was at a VTA meeting where so many struggles were going on right now for funding, the cuts had been so severe to Caltrans, but as a member of the VTA Board representing the City of Milpitas, gave her assurance that something will be done and it wouldn't fall through the cracks.

Mayor Esteves congratulated the Art of Living Foundation for sponsoring a very nice Peace Concert at the Community Center; congratulated the three awardees Marilyn Hay, Citizen of the Year; Henry DeKruyff, Police Officer of the Year; and Steven King, Firefighter of the Year; and as a member of the Knights of Columbus, the Mayor invited everyone to attend the Awards and Banquet on March 20 at the Community Center.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Polanski, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Councilmember Gomez asked that item 4 be removed.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 4, in accordance with the staff recommendations.

M/S: Polanski, Livengood.

Ayes: 5

***2. Appointment**

Approved the Mayor's appointments to the Arts Commission as follows:

- * Donnie Ettinger to fill the vacancy created by Barbara Barrie, for a term expiring October 2006.
- * Harriet McGuire from Alternate 2 to Alternate 1, for a term expiring October 2005.
- * Angela Gupta to the Alternate 2 position, for a term expiring October 2004.

***7. Knights of Columbus Fee Waiver**

Approved the request from the Knights of Columbus to waive the rental fees totaling \$323.00 for use of the Community Center Auditorium on March 20, 2004.

***8. Manor Pump Station (Project Nos. 3385 & 3396)**

Adopted Resolution No. 7389 granting initial acceptance subject to the one-year warranty period and reduction of the faithful performance bond to \$ 26,064.20.

***9. Initial Acceptance Interim Senior Center Modularity (Project No. 8151)**

Adopted Resolution No. 7390 granting initial acceptance subject to the one-year warranty period and reducing the faithful performance bond to \$31,900.

***10. Interim Senior Center Site Improvements (Project No. 8151)**

Adopted Resolution No. 7391 granting initial acceptance subject to the one-year warranty period and reducing the faithful performance bond to \$7,558.

***11. Plans & Specs (Project Nos. 4200, 4222, & 8149)**

Approved plans and specifications. Authorized advertising for construction bid proposals for Singley Area Street Rehabilitation, Marylinn Drive Sidewalks, and Sports Center Master Plan Improvements.

- *12.
Hall Park Walkway
(Project No. 5058)** Approved plans and specifications. Authorized advertising for bid proposals for construction.
- *13
MLS Soccer
Summer 2004 Soccer Camp** Approved and authorized Recreation Services to enter into a contract with Major League Soccer for Summer 2004 Soccer Camp Programs not to exceed \$10,000.00, subject to approval by the City Attorney.
- *14.
Skyhawks Sports Program
Summer 2004 Sports Camps** Approved and authorized Recreation Services to enter into a contract with Skyhawks Sports Program for Summer 2004 Sports Camps not to exceed \$20,000.00, subject to approval by the City Attorney.
- *15.
O'Brien Kreitzberg
Montague Expwy. Widening
(Project Nos. 4178, 4179, 4180
4133, 4186, 5069, 7086, 7098)** Approved Amendment No. 5 to the Agreement between the City of Milpitas and O'Brien Kreitzberg authorizing an assignment of the rights and obligations of that contract to URS Corporation Americas as the successor to O'Brien Kreitzberg.
- *16.
Harris Design, Athletic Court
Resurfacing (Project No. 5069)** Authorized the City Manager to enter into an agreement with Harris Design in the amount of \$71,035, subject to approval as to form by the City Attorney.
- *17.
Dan Cloak Environmental
Consulting** Authorized the City Manager to execute the consultant agreement with Dan Cloak Environmental Consulting for a not-to-exceed amount of \$36,000.
- *18.
Network Storage Equipment** Approve the purchase of network storage equipment from Winchester Systems in the amount not to exceed \$29,825.74.
- *19.
Payment Requests
Miscellaneous Vendors** Approved the following purchase requests.
1. \$8,392.27 to Folger Graphics for printing of a four-color, six page annual residential Recycling program newsletter and mailing preparation for the Utility Engineering Division. (Funds are available from the Engineering Division operating budget for this service.)
 2. 9,203.42 to United GreenTech for the purchase of Rain Master radio controlled irrigation control equipment to be used to remotely control irrigation functions on Sinclair Road for the Trees and Landscape Maintenance Function. This is a portion of equipment required to implement Phase 5 of the central automated irrigation management system allocated in the 98-1 Lighting and Landscape Maintenance District. (Funds are available from the Public Works, 98-1 Lighting and Landscape Maintenance District Fund operating budget for this purchase.)

PUBLIC HEARINGS

- 1.
Negative Declaration
Introduce Ord. No. 38.763
(Continue)** City Manager Wilson reported that staff was requesting the Council continue adoption of the Negative Declaration and introduction of an ordinance amending the Zoning Code to the April 6, 2004, Council meeting (to allow staff additional time to prepare the Zoning Code text amendments that relate to single family dwellings and to allow review by the Community Advisory Commission).
- Mayor Esteves opened the public hearing and asked if anyone wished to speak. Rob Means, Milpitas, said he understood the purpose of this ordinance was to cut down on the number of cars parked in neighborhoods but to address that particular issue, he thought it should be more expensive, more difficult, or more costly or something about cars so there won't be so many cars in the neighborhoods, and suggested attacking the problem directly rather than indirectly.

MOTION to continue the public hearing to April 6, 2004.

M/S: Polanski, Livengood.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:48 p.m.
CALL TO ORDER

RA2. Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.
ROLL CALL

RA3. MOTION to approve the Redevelopment Agency minutes of March 2, 2004, including joint meeting with the City Council, as submitted.
MINUTES

M/S: Polanski, Livengood.

Ayes: 5

RA4. MOTION to approve the Agenda and Consent Calendar as submitted.
AGENDA

M/S: Livengood, Polanski.

Ayes: 5

RA5. Capital Improvements Program Manager Mark Rogge presented a brief update on the Library Project reporting that staff was working on a draft request for proposals for the architectural design based on the Council approved Needs Assessment Study and Library Building Program. Mr. Rogge further reported that staff was drawing on the experience with the City Hall building and working with the City Attorney on legal reviews and with IS to create online information; the environmental process (CEQA documents) was moving along; utility undergrounding and relocation was underway; and hiring a consultant architectural team was anticipated in June.
LIBRARY PROJECT UPDATE

MOTION to note receipt and file.

M/S: Gomez, Polanski.

Ayes: 5

RA6. Councilmember Livengood said he had a discussion with the City Attorney last week and he did have a conflict of interest related to this item; he didn't have a relationship with the applicant but a business he had an interest in has been a source of income from KB Homes and as a result, he would need to abstain on this item and left the Council Chambers.
**ABEL ST. IMPROVEMENTS
CONSULTANT AGREEMENT**

Assistant City Engineer Greg Armendariz reported the item before the Council this evening involved Abel Street Midtown improvements and staff was excited to initiate the first step in the implementation phase of the Midtown Plan. Mr. Armendariz presented background information on the Midtown Specific Plan noting that the Specific Plan called for transformation of Abel Street into a boulevard setting conveying vehicles to and from Calaveras and Great Mall Parkway; Main Street called for transformation into a pedestrian friendly environment with shops where people would park and walk and also called for streetscape enhancements. Mr. Armendariz reported at the last Council meeting, the Council approved entering into three-party agreements with Santa Clara County and KB Homes for development of the County-owned parcels surrounding the Elmwood facility and adjoining Abel Street; KB Homes plans to build 823 new homes, a new City park, and will be required to construct improvements on Abel Street between Corning and Great Mall Parkway consistent with the Midtown Specific Plan streetscape standards.

City Attorney Steve Mattas stated for the record that the Mayor would also be stepping down because of a property interest that may be impacted and staff would have that confirmed before the next action on this. The Mayor passed the gavel to Vice Mayor Dixon and left the Council Chambers.

Mr. Armendariz continued reporting that the developer would be conditioned to improve Abel from Great Mall to Corning and the City would complete improvements from Corning to Weller Street; KB Homes had agreed to pay \$275,000 for its share of the design and preparation of construction plans and specifications; the City's share of the design costs was \$375,000; and in accordance with the City's consultant selection process, staff selected JMH Weiss, Inc., to provide the design services. Mr. Armendariz reviewed the recommendation to approve a new CIP project for Abel Street Midtown Improvements and to authorize the City Manager to execute an agreement for design services with JMH Weiss, Inc.

Vice Mayor Dixon inquired about the infrastructure portion of what KB will do and asked if it would include any fiber optics. Mr. Armendariz responded staff would be evaluating all the existing utilities and future needs now in existence now and if there was a need to bring in fiber optics, it would be included with KB paying its fair share.

Councilmember Gomez asked if the Penitencia Creek trail was out of the scope of the project. Mr. Armendariz responded the Penitencia Creek trail had been identified and there was an element included for the trail.

Vice Mayor Dixon commented that KB Homes was very cooperative with the School District and there was a possibility that KB will allow one of the street names to be auctioned off and the School District would appreciate any added revenue. Vice Mayor Dixon acknowledged School Board Member Marsha Grilli in the audience.

MOTION to:

1. Approve a new CIP project for Abel Street Midtown Improvements and a budget appropriation of \$275,000 from developer contributions and \$375,000 from the 2003 RDA Bond Proceeds (total \$650,000); and
2. Authorize the City Manager to execute an agreement for services with JMH Weiss, Inc., in the amount not to exceed \$600,000, subject to approval as to form by the City Attorney.

M/S: Polanski, Gomez.

Ayes: 3

Abstain: 2 (Esteves, Livengood)

Mayor Esteves and Councilmember Livengood returned to their seats.

***RA7.
PROPERTY APPRAISAL**

Authorized the City Manager to obtain appraisal services relative to an evaluation of APN 022-08-042 for a not-to-exceed amount of \$15,000.

JOINT MILPITAS FINANCING AUTHORITY, REDEVELOPMENT AGENCY, AND CITY COUNCIL MEETING.

**FA1.
CALL TO ORDER**

Mayor Esteves called to order the joint meeting of the Milpitas Financing Authority, Redevelopment Agency, and City Council meeting at 8:06 p.m.

**FA2.
ROLL**

Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

**FA3.
AGENDA**

MOTION to approve the agenda as submitted.

M/S: Polanski, Gomez.

Ayes: 5

**FA4.
DEFENSE SERIES 2000
BONDS
GREAT MALL**

City Manager Thomas Wilson reported this was a continuation of the work that started with the vision to redesign and restructure the Redevelopment Agency to accommodate a whole series of projects, to restructure financially the Redevelopment Agency and look to providing greater support and benefit to the City's General Fund and developments as they come forward. Mr. Wilson reviewed some background information reporting that when the Great

Mall was developed, there was a need for a lot of infrastructure work to be done to change the character of the area and to improve the amenities from utilities to streets and roadways; to finance that effort, the City issued \$10 million in bonds to accomplish the improvements and looked to sales tax revenue generated from the Great Mall and pledged one-half of the sales tax to pay off the debt resulting in it being a very positive opportunity for the Great Mall to locate in Milpitas. Mr. Wilson further reported that since that period of time, the City has been held accountable for one-half of the sales tax to pay off the debt; within the restructuring of the Redevelopment Agency, there was now the opportunity to shift the funding of that debt and move it to a Redevelopment funding source and free one-half of the sales tax to come to the General Fund. Mr. Wilson explained the proposal to defease the 2000 Great Mall Bonds by substituting restricted use Redevelopment Funds from Project Area 1 for unrestricted sales tax revenue would immediately produce an additional approximate \$1.1 million in annual sales tax revenue for the City's General Fund. Mr. Wilson noted that Tom Dunphy of Lamont Financial, a member of the team of financial advisors, was present along with staff members who worked on this project Blair King, Assistant City Manager, Finance Director Emma Karlen, City Attorney Steve Mattas, and staff of the City Attorney's Office. Mr. Wilson stated that the adoption of the Eighth Amendment to the Redevelopment Plan created the conditions to allow for this substitution, the Great Mall improvements benefit the Project Area No. 1, and with the exception of the pledge of sales tax, the terms of the 2000 Bond would remain the same.

Councilmember Livengood inquired if the 2000 action included some kind of refinancing. Mr. Wilson responded there was a refinancing of the debt about the time he arrived, early in 2000, to restructure the debt for a more favorable interest rate.

Mayor Esteves inquired if refinancing would be better at this time. Mr. Wilson responded the cost was being moved over to the Redevelopment Agency, which was inexpensive money, and substituting that security for the sales tax. Mayor Esteves asked if there was any penalty for prepayment. Mr. Wilson said if we were to prepay or pay it off, penalties would be incurred so it was better to leave it in place until its maturity. Mayor Esteves asked what was the net cost to the City. Mr. Wilson responded there was just a transfer cost in order to substitute the securities. Assistant City Manager Blair King added that the estimated cost to do this was \$40-50,000 and in response to the Mayor's earlier question, the earliest call date for the bonds was 2009.

Vice Mayor Dixon commented that because of the City's bond rating, that interest rate was extremely low, this was very creative, other cities with large Redevelopment Agencies have done this, the City of Milpitas just hadn't brought in this type of experience before, this was a first for Milpitas and very beneficial to assist the General Fund.

MOTION to adopt Redevelopment Agency Resolution No. RA218 authorizing an expenditure of Tax Increment Revenue in an amount not to exceed \$7 million to defease the Great Mall of the Bay Area Sales Tax Revenue Bonds, Series 2000.

M/S: Dixon, Polanski.

Ayes: 5

MOTION to adopt Milpitas Public financing Authority Resolution No. FA0009 authorizing the defeasance of the Authority's Great Mall of the Bay Area Sales Tax Revenue Bonds, Series 2000, and approving related agreements and actions.

M/S: Dixon, Polanski.

Ayes: 5

**FA5.
ADJOURNMENT**

There being no further Financing Authority business, Mayor Esteves adjourned the Financing Authority meeting at 8:22 p.m.

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:22 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

3. Protocol for Public Records Access to Public Meetings

Councilmember Gomez placed this item on the agenda and noted he had placed extra copies of his memo in the agenda rack for members of the audience. Councilmember Gomez said what he was hoping to do with this policy was to take care of all open government policies with one policy; the Council had supported SCA1 in the past that takes the burden of proof from the requestor to say why a record should be public and puts it on the agency. Councilmember Gomez further stated he was asking the City Attorney to give guidelines and develop a protocol that would provide guidelines for open government and access to records and access to meetings, bring it back to the Council, and eventually that could be put into an ordinance.

Vice Mayor Dixon said she agreed, some of the things had merit, a lot of the things were already being done, and this is what actually got her involved with the government process when a developer came in and wanted to develop part of the hillsides. Vice Mayor Dixon further stated she was disappointed that a lot of those decisions were made behind closed doors before the public had a chance to comment, so she agreed there was always room for more transparency in government. Vice Mayor Dixon commented on a sample City Council handbook the City Attorney had provided to her and Councilmember Polanski (when the Council City Attorney Subcommittee met) last year and asked that included in the direction to the City Attorney tonight be a request for the City Attorney to research and provide a matrix of where every city in the Bay Area is at in terms of this.

Councilmember Polanski commented that she thought a handbook would be helpful to new members of the Council because no guide was given to her as to what to do as a Councilmember and she also didn't receive one when she was on the School Board. Councilmember Polanski said she would also like to see as part of this a formal review process for the City Manager and City Attorney, which she thought would be helpful to the Council. Councilmember Polanski said she was glad to hear that a lot of what was in the document was already being done, she supported open government, School Board closed sessions were always recorded, she agreed with all the concepts, and asked if there was a list of entities referred to on page 2 of the memo. Councilmember Gomez responded this was something the City Attorney would research and bring back to the Council. Councilmember Polanski expressed concern for the 10 day time frame for minutes. Councilmember Gomez said that would be a set guideline to give the public an opportunity to look at draft minutes. Councilmember Polanski asked if there would be a certain standard for daily calendars, commenting that she uses the calendar the Council receives in their packets. Councilmember Gomez said the goal was so that the public knows what and when we are meeting any time we are doing the City's business.

Councilmember Polanski said she voted no on supporting SCA1 because it doesn't apply to State Government and State elected officials; when it applies to them as well, there will be more trust in government. Councilmember Polanski thanked Councilmember Gomez for bringing this forward.

Councilmember Livengood asked for clarification when the handbook was given to the Council. City Attorney Mattas clarified that the entire Council hadn't receive it as it was provided as part of the City Attorney Subcommittee's work; however, if the Council would like copies, the type of policies proposed are generally included in a compiled policy, and it could be included. Vice Mayor Dixon said that was what she was requesting.

Councilmember Livengood commented that the list Councilmember Gomez had put before the Council was a specific set of recommendations that go beyond State law and what is being done today; it would make some very significant changes and be landmark legislation; and he supported each and every one of the items without any hesitation and was pleased this item was before the Council. Councilmember Livengood asked what was the timing on this and

how would it look when it comes back. City Attorney Mattas said he would like to understand exactly how the Council wants it to come back; there were, from his professional opinion, some issues that were policy issues for the Council and he thought it would be helpful for the Council to see some of these through hypotheticals in implementation because there were significant issues raised by some of them and there were also some timing issues; if the Council wanted as part of a response back, he could provide them with some hypotheticals of how some of these would look in implementation because it was an expansion over what the Public Records Act requires right now and something the Council should understand fully the impacts should the Council decide to adopt the policy as presented right now; and if the Council wanted that type of information, it would be four to six weeks (at least two meetings) before he could get back to the Council. Mr. Mattas further stated that the request from Vice Mayor Dixon for comparison of how other communities deal with this may take a little more time.

Mayor Esteves said he agreed with the City Attorney about approaching this on a policy level first; he wanted to have information from other cities and was confident that Milpitas has been practicing open government but it just needs to be put into policy. Mayor Esteves further stated that the law needs to be conformed to and business transacted prudently while still protecting the residents and protecting exposure to liability; he believed in open policies but they must be done the right way.

Councilmember Gomez said this was a policy and not an ordinance yet; he was willing to look at other cities but didn't want to prevent this from moving forward; none of this was new and cities around the State have been doing this.

Vice Mayor Dixon clarified when she said she would like a comparison with other cities, it was because she was particularly concerned about potential litigation, for current litigation the City was currently involved in, because there was such a major liability to the taxpayers and it could potentially cost the taxpayers millions and that was the reason behind her request to see what other cities have because they may have what she called a "lessons learned" book on litigation lawsuits that have come out of this.

Debbie Giordano, Milpitas, said she strongly supported the open government sunshine proposal before the Council and believed the people of Milpitas owned a great debt of gratitude to Councilmember Gomez for bringing this forward. Ms. Giordano further stated that over the last few months she had been meeting with and talking with many members of the community and it had become clear there is suspicion and cynicism about government; the action by the Council two weeks ago and the manner in which it was done re-enforced that feeling in Milpitas; and Milpitas needs real leadership and decisions must be made in a more open and public manner.

Vice Mayor Dixon thanked Council Candidate Giordano for her political statement tonight but she wanted to get a clarification from the City Attorney as to the recent acquisitions by Ms. Giordano.

City Attorney Mattas stated that the Council's action at the last meeting met all the requirements of the Brown Act, the item was properly agendaized, the Council discussed it, in fact there was extensive discussion of it, and it met all the requirements of the Brown Act. Mayor Esteves asked the City Attorney to restate his comments loud and clear. Mr. Mattas said that, as he had indicated, the Council's action was appropriate, the item was on the agenda, it had been considered appropriately in Closed Session as part of Labor Negotiations, the Council acted on it in the open session and took appropriate action in compliance with the Brown Act.

Vice Mayor Dixon offered a motion to direct staff according to the Council's discussion. Councilmember Polanski seconded the motion. City Attorney Mattas said he wanted to understand the Council's direction and asked if it included the hypothetical examples. Vice Mayor Dixon said it included the hypothetical examples, the survey, the sample handbook,

and standard evaluation process for the City Manager and City Attorney. Councilmember Polanski, the second to the motion, agreed. Councilmember Gomez asked the City Attorney if the Council could take action on some of the items considering the way the item was agendized. City Attorney Mattas said as he understood the motion as to the policy before the Council tonight, the Council wished to receive hypotheticals, information of how this type of policy is implemented or exists in other communities, the Council also wanted a report as to the specific policy that Councilmember Gomez has set forth; as to the issue of the handbook and evaluation process, that would be in the form of direction with staff to come back because the Council's hasn't seen all of those; and he would not bring it all back as one comprehensive document unless the Council directed him to do so.

MOTION (restated) to direct the City Attorney to develop a policy for public access to meetings and for disclosure of public records, request the City Attorney provide a survey of how other cities in the Bay Area handle public meetings and access to public records and provide hypothetical examples of how the policy would look, and further directed the City Attorney to bring back copies of a sample Council Handbook and a standardized process for evaluating the City Manager and City Attorney.

M/S: Dixon, Polanski.

Ayes: 5

**4.
SBX4-3 & ABX4-1
Support of Workers
Compensation Reform
Legislation**

This item was removed from the Consent Calendar by Councilmember Gomez who stated in looking over the legislative analysis, he had some problems with the proposed draft letter because it takes away the presumptive from our public safety officers, there was no guarantee that insurance premiums would go down, and it was too restrictive for working families; he felt this issue needed to be hammered out more by the legislature and so he would not be supporting the letter as written.

Councilmember Polanski asked for a brief staff report.

Principal Analyst Cindy Maxwell reported this came from the Legislative Subcommittee of the Economic Development Commission (EDC) and was based on letters from the League of California Cities. Ms. Maxwell noted that the Economic Development Commission Chair Diane McDonough and Legislative Subcommittee Member Frank De Smidt were present in the audience.

Mayor Esteves commented, as liaison to the EDC, they would like to support this because Workers Compensation costs have been increasing tremendously and driving businesses out of California.

Diane McDonough and Frank De Smidt addressed the Council. Mr. De Smidt said they have been attempting to have a voice from Milpitas and this was a chance; Workers Compensation is the number one issue for the California economy for the business community; if this legislation fails, it will go to the voters in November; if the Legislature passes it, there was a good chance there will be some savings for the City of Milpitas sooner than later and the sooner the costs go down, the sooner the business climate will improve. Mr. De Smidt further commented that Workers Comp reform is the number one, high on the list and is wanted sooner rather than waiting to put it on the ballot. Mr. De Smidt urged the Council to support this letter of support for reform with the main thrust to reduce costs to the City and the City employees. Ms. McDonough added that a lot of cities in California support this and the Commission would like Milpitas to be proactive.

Vice Mayor Dixon asked if the Chamber had addressed this. Mr. De Smidt responded yes, the Chamber has been supporting Workers Comp reform for a long time.

Councilmember Livengood said the letter didn't mention the presumptive issue for public safety and asked if they were aware of how the bill impacts the presumptives as it relates to public safety employees. Mr. De Smidt said he was not aware of the bill in great detail, that was something that probably would be discussed in the legislature and in committee meetings

and perhaps amended conditions made to address that issue, but to toss the whole bill out and not try to improve on it would be a mistake. Councilmember Livengood said nobody was going to argue Workers Compensation reform was needed; however, he was concerned about the presumptive issue for Public Safety. Councilmember Livengood further stated he supported Workers Compensation reform, it was long overdue, but would condition his vote and was not supportive of removing those presumptives for public safety personnel. Councilmember Livengood further stated he hoped that once we get beyond Workers Compensation reform, we can look at the other issues chasing people out of this state.

Councilmember Gomez asked if this meant the Commission agreed with Councilmember Livengood's recommendation there should be a condition for presumptives. Mr. De Smidt said that issue wasn't brought up in the Subcommittee; he had nothing against exploring it but, at this time, he couldn't speak for the Commission.

Mayor Esteves commented that the Commission was supporting reform as a whole.

Vice Mayor Dixon said she thought this was a "no brainer", the voters made it clear when the voters elected a new Governor, the Governor was dead serious about this, it was going to happen one way or another, and applauded the Commission for bringing this forward and she would be supporting it as submitted.

Councilmember Gomez said he wanted to make sure if the Council was supporting Workers Compensation reform or specifically this bill. Mr. De Smidt said this was support of the League of California Cities support for two bills.

Debbie Giordano, Milpitas, said the current Workers Compensation Program and costs associated with it were hurting every working family in California; she fully supported Workers Compensation reform; however, she could not support the two bills the Council was being asked to support; she felt they were reform in its extreme and placed reform on the backs of working men and women; reform was needed based on compromise and suggested the City support Workers Compensation reform that is neither the agenda of the right or the left but one that balances all interests and is the result of negotiations and compromise and that represents good public policy.

Councilmember Polanski commented that Workers Comp reform has been negotiated, discussed, reviewed, on the left, on the right, and in the middle for years and nothing has been down; she also wanted to applaud the Economic Development Commission for looking at this and bringing a sound recommendation to the Council, we have to start somewhere, and she would be supporting the recommendation.

MOTION to authorize the Mayor to send the proposed draft letters in support of SBX4-3 and ABX4-1.

M/S: Dixon, Polanski.

Ayes: 4

Noes: 1 (Gomez)

Councilmember Livengood clarified that his vote was contingent on the presumptive issue for Public Safety.

Mayor Esteves informed the Council that the Economic Development Commission was working very hard, more action items would be coming forward from the Commission, and thanked the members of the Commission for all their contributions.

UNFINISHED BUSINESS

5. Odor Control Action Plan Update & Consultant

Principal Civil Engineer Darryl Wong introduced representatives from the Wastewater Pollution Control Plant and BFI who were present in the audience. Mr. Wong reviewed key activities since the last report commenting that staff was working on March and April outreach

Agreement

by distributing door hangers in neighborhoods in the north westerly area of the city and the Bay Area Air Quality Management District began implementing the final stage of the rapid notification program. Mr. Wong reported that staff had negotiated a professional odor control advisory services agreement with Cal Recovery for odor expertise to supplement the staff and to help with community outreach on an as-needed basis. Mr. Wong further reported the number of complaints logged in for October was 96, November 50, December 16, January 31, February 11, and March 15. Mr. Wong pointed out an error in the agenda information stating that the recommendation was to approve an agreement and not an agreement amendment.

MOTION to note receipt and file progress report and authorize the City Manager to execute the agreement with Cal Recovery Inc., in the amount of \$10,000, subject to approval as to form by the City Attorney.

M/S: Dixon, Polanski.

Ayes: 5

NEW BUSINESS

6. Ethics Code Development

Acting Planning Director Tambri Heyden reported Task 1 of the City's ethics project involved three deliverables: a stakeholder report, a recommended plan for preparing the ethics code, and a citizens awareness survey that was approved at the March 2, 2004, Council meeting and was deployed on March 10, 2004, for completion on March 24, 2004. Ms. Heyden further reported receipt of the stakeholders report was being postponed until March 29, 2004, after the additional stakeholder interviews were conducted; therefore, an amendment to the consultant contract to reflect the cost for the additional interviews and a modified schedule were being submitted to the Council for review. Ms. Heyden noted that the modified schedule would not affect the critical dates for adoption of the code and necessary training prior to the election

Ms. Heyden pointed out a correction to the list of names for additional interviews (Karen Serpa was shown as a local campaign consultant partner of Victor Ajlouny and should be listed as an independent consultant retained periodically by Mr. Ajlouny). Ms. Heyden also made a correction to the contract amendment amount (for the additional interviews) stating that it should be \$3,300 rather than \$1,500, for a total amount not to exceed \$25,260.

Ms. Heyden reviewed the five Decision Points before the Council for consideration reporting that Decision 1 (Nature) - the Code be a living document; Decision 2 (Leaders) - it apply to the City Council, all Board and Commission members, candidates running for election, the City Manager, and Senior staff, with leadership resting with the City Council and City Manager; Decision 3 (Content) - the Code describe the City at its best with a set of specific behavior; Decision 4 (Writing) - the Code be developed collaboratively through four CAC hosted sessions with wording assistance provided by the Steering Committee; and Decision 5 (Future) - there be an accountability process and that those involved in drafting the Code be asked for input.

Ms. Heyden noted that Dr. Shanks was present to answer questions regarding the Decision Points and staff was recommending the Council approve the Decision Points and the amendment to the contract.

Councilmember Gomez noted that Rick Callendar on the list to be interviewed was not a campaign consultant but rather a representative of the NAACP.

Mayor Esteves expressed concern that he was hearing for the first time names for interviews that were not Milpitas residents and asked what the results or impact would be to the City and what would be the weight of their input. Dr. Shanks responded that from his experience, the broader the net (in terms of information gathered) can be cast, the better the results; people from outside the City would have some influence in the City in some of the areas being talked about; the real weight would be on the residents of Milpitas but these people are also stakeholders and have played a part in the past. Mayor Esteves expressed further concern that

the area outside Milpitas is too big and wanted to make sure that a good cross-section outside Milpitas was represented. Dr. Shanks said from all the people he had met, these are people whose names have come up in the interviews and he thought these were all people who have played a role in the past.

Councilmember Polanski commented that Rick Callendar (on the list) also works for the Santa Clara Valley Water District and Dan Terry (also on the list) was a former resident. Councilmember Polanski said she was quite pleased the additional cost was only \$1,500 when adding the 17 names from Councilmember Gomez and two names from the Mayor and expressed concern that the Council could keep coming up with more names and stall the process. Councilmember Polanski said she had read through the Plan, she knew the CAC, the Steering Committee, and everyone was working diligently, and hoped there would be a good turnout from the stakeholders. Ms. Heyden corrected the amendment amount stating it was \$3,300 based on an hourly rate for the additional interviews.

Dr. Shanks said he had left out a phrase in the Plan that he felt changed the nature of the paragraph and called attention to the last paragraph on page 10 of the Plan stating that the statement in the third sentence was about the Council and was not meant about the City Manager or Senior staff. Dr. Shanks said the examples given in this document were not about Milpitas but rather talking in general terms. Dr. Shanks commented that he would write the stakeholders report from his independent view, it was important for everybody to understand that he would write what he would write; if there was something he misunderstood, that was where the staff could be very helpful; there was a good deal of concern about whose consultant he was and he hoped that through this whole process he would be everyone's consultant and no one's consultant; being from New York, he tended to be independent and when the stakeholders report was written, everyone will be happy and everyone will be upset if he does his job right.

Vice Mayor Dixon stated while discussing this item, she wanted to make a public statement of discovery in keeping with the good faith entrusted in her as an elected official. Vice Mayor Dixon said that since the last Council meeting, her husband and son found an unidentified package on one of their cars; inside was potentially damaging information on Planning Commissioner, Council Candidate, and her neighbor, Debbie Giordano; it was entitled "People for Dixon"; a few days later a voicemail message was left for her from a man who identified himself as the private investigator assigned to the Giordano case; she then became alarmed, especially with the Council discussing this right now. Vice Mayor Dixon further stated she got the feeling she was being set up but didn't know by whom; she assumed it would not be by Ms. Giordano or her campaign backers because she was not sure why she would want this distributed. Vice Mayor Dixon said she sought legal advice and it saddened her to state publicly that she will personally not use this information in the upcoming election; she was concerned that there was no way of knowing whether this information had already been disbursed; she had no name or phone number; this was a prime example of what concerned her as we do this; it had been very distressing to her; and she had contacted the City Attorney who recommended she find her own legal advice.

MOTION to approve the Plan for developing the Ethics Code and Amendment No. 1 to the Ethics Project Scope of Work for additional interviews at a cost not to exceed \$3,300.

M/S: Gomez, Polanski.

Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:39 p.m.

Gail Blalock, CMC
City Clerk

MARCH 22, 2004

UNAPPROVED MINUTES

UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special Meeting of Milpitas City Council
Date of Meeting:	March 22, 2004
Time of Meeting:	5:30 p.m. (Closed Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the Special Meeting of the Milpitas City Council at 5:30 p.m. Present were Mayor Esteves, Vice Mayor Dixon (arrived at 5:32 p.m.), and Councilmembers Gomez, Livengood, and Polanski.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that *remarks be limited to two minutes or less.*

There were no requests.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following item listed on the Special Meeting Notice:

1. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
(Pursuant to Government Code Section 54956.9[b])
Significant exposure to litigation
One Case

Mayor Esteves adjourned the meeting to closed session at 5:31 p.m.

RECONVENE

The Special City Council reconvened with all members present at 6:14 p.m.

**CLOSED SESSION
ANNOUNCEMENTS**

Staff was given direction and no action was taken.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the Special City Council meeting at 6:15 p.m.

Gail Blalock, CMC
City Clerk